



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
WYOMING REGULATORY OFFICE  
2232 DELL RANGE BOULEVARD, SUITE 210  
CHEYENNE WY 82009-4942

February 7, 2013

Wyoming Regulatory Office

**RECEIVED**

FEB 14 2013

Mr. Art Palomares  
U.S. Environmental Protection Agency  
Region 8, ENF-T  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

Office of Legal Enforcement Program  
Region 8 EPA

Dear Mr. Palomares:

Enclosed is a referral package documenting unauthorized activities at the Johnson property near Fort Bridger, Wyoming. This package was prepared in accordance with procedures specified in the Field Level Agreement between the U.S. Army Corps of Engineers (USACE), Omaha District and U.S. Environmental Protection Agency (USEPA), Region 8 enacted on September 9, 2010.

The responsible party is Mr. Andrew Johnson. In the late summer of 2012, he used heavy equipment to construct a dam by redistributing soil on-site resulting in discharges of dredge and fill material into Six Mile Creek. The property is located in the SW ¼ NE ¼ of Section 30, Township 15 North, Range 115 West, Uinta County, Wyoming.

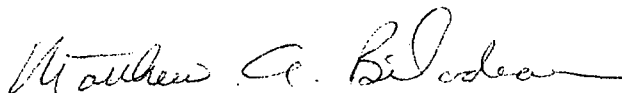
Mr. Kevin Little from our office visited the site with Mr. Johnson on October 11, 2012, and determined that construction activities had resulted in a discharge of 12 cubic yards below the ordinary high water mark. Dam construction resulted in filling a 40-foot reach of the creek and inundation of a 785-foot reach. The reservoir pool spread beyond Mr. Johnson's property and onto the neighboring parcel. A notice of violation letter was sent on October 26, 2012, and a copy was provided to the USEPA. A copy of Mr. Johnson's response is enclosed.

Construction of this reservoir prompted complaints from numerous concerned neighbors, government entities at the county and state level, and a member of the Wyoming legislature. This is the type of case USEPA should request, not only to resolve environmental harm but also to establish an extremely beneficial deterrent effect in Uinta County due to widespread public interest in this violation.

The Memorandum of Agreement (MOA) concerning Federal Enforcement of the Section 404 Program of the Clean Water Act dated January 19, 1989, allows the USEPA to act as lead enforcement agency for any unauthorized activities. We encourage the USEPA to participate as the lead agency in this enforcement action. As specified under Part III (G) of the MOA, we will not accept an after-the-fact permit application or take any corrective measures until the USEPA has determined an appropriate enforcement response.

Please review the enclosed information and document the USEPA's decision regarding the lead agency role on the enclosed form. Mr. Little has been assigned as the project manager and the file number is NWO-2012-02486. He can be reached at (307) 772-2300 if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Matthew A. Bilodeau".

Matthew A. Bilodeau  
Program Manager  
Wyoming Regulatory Office

Enclosures

Copy Furnished:

David LaGrone (w/enclosures)  
U.S. Army Corps of Engineers  
Omaha District Office, CENWO-OD-R  
1616 Capitol Avenue  
Omaha, Nebraska 68102-4901

## Initial Investigation Report

### Andrew Johnson, Dam and Fish Pond Construction

In July 2012, Andrew Johnson began constructing a dam on his property, located at 686 County Road 260, Fort Bridger, Wyoming, 82933-8814. The property is located approximately 4.8 miles south southwest of Fort Bridger, Wyoming, in the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 30, Township 15 North, Range 115 West, Uinta County, Wyoming. The location of the project is shown in Figure 1.

Figure 1. Location of the Project



On May 25, 2011, the Wyoming State Engineer's Office (SEO) granted a stock pond permit for this project. According to the permit, the dam is 18 feet tall, with a high water line elevation of 13 feet. The dam is constructed of compacted earth fill and is buffered on its upstream face by one-foot-thick rock riprap.

In response to complaints WRO received by phone on August 27 and August 31, 2012, Matthew Bilodeau of WRO contacted Mr. Johnson on September 5, 2012, to inquire about dam construction activities on his property and authorization for such work. Mr. Bilodeau briefly explained the Department of Army's Clean Water Act regulatory authority. Mr. Johnson apologized, said he was unaware of the need for a DA permit, and expressed a desire to cooperate in resolving the matter. Mr. Bilodeau requested that Mr. Johnson send information about the project to WRO and Mr. Johnson agreed to do so. Following the conversation, WRO did not receive any information from Mr. Johnson about the project.

On September 13, 2012, a concerned citizen sent WRO images of the dam being constructed.

On October 9, 2012, Jesse Fernandes and Kevin Little of WRO called Mr. Johnson and set up a date and time for WRO staff to conduct a field visit. Mr. Johnson asked if he needed to prepare any paperwork for the field visit and Ms. Fernandes said that that was unnecessary.

On October 11, 2012, Ms. Fernandes and Mr. Little visited the site with Mr. Johnson and his wife, Katie Johnson, and confirmed the presence of a dam and impoundment on Six Mile Creek. Based on the discussions with Mr. Johnson and the site investigation, WRO staff concluded that fill had been deposited below the ordinary high water mark to dam the creek. Mr. Johnson said that the purpose of the dam was to create a fishing pond. There did not appear to be any wetlands in the project area. During the site visit, Mr. Little used a geographic positioning system (GPS) device to delineate the boundaries of the project area.

Mr. Little uploaded the GPS data into ArcMap and superimposed the delineated project area boundaries over an aerial image from 2009. Based on that resulting image, as well as observations made during the site investigation, WRO staff determined that the dam construction activities performed on the property had resulted in at least 11.85 cubic yards of material being placed below the creek's ordinary high water mark. Construction activities impacted a reach of Six Mile Creek more than 785 feet in length. Dam construction resulted in the complete fill of a reach of creek greater than 40 feet in length and the dam resulted in the inundation of a reach of creek greater than 745 feet in length. Inundation caused by the dam spread beyond Mr. Johnson's property and onto the neighboring parcel.

Six Mile Creek is a perennial tributary of Blacks Fork River, which is a tributary of the Green River, itself a traditional navigable water. Therefore, Six Mile Creek is likely to be a water of the United States as defined at 33 CFR Part 328.3(a).

The activities on Mr. Johnson's property were not exempt from Department of the Army authorization. A standard project-specific permit would have been required prior to proceeding with these activities. WRO records indicate that the office never received a standard permit application and that Department of the Army authorization was never granted. Therefore, these activities were unauthorized. A notice of violation letter with a cease and desist order was sent to Mr. Johnson on October 26, 2012.

On November 13, 2012, WRO received a response from Mr. Johnson. The response included a short letter, a copy of the project's SEO permit, and two images of the project. In his response, Mr. Johnson reiterated that the purpose of the project was to create a fishing pond and that he had been unaware of WRO's jurisdiction over the project. Mr. Johnson expressed a desire to resolve the permitting issue.

On November 28, 2012, Ms. Fernandes contacted several state and federal agencies, including the SEO, to solicit general comments about the project. Ms. Fernandes spoke with Mr. John Barnes of SEO, who, on behalf of the Wyoming State Engineer, authorized Mr. Johnson's SEO permit. Mr. Barnes said he had reviewed the WRO notice of violation letter to Mr. Johnson and was familiar with the project. Mr. Barnes explained that it was SEO policy to include a special notice to all first-time SEO permittees. The notice explains that projects permitted by SEO may also require additional approvals, including authorization by the WRO. Mr. Barnes said that Mr. Johnson was a first-time SEO permittee and would have received a copy of this notice when he received the permit. Following the conversation, Mr. Barnes emailed Ms. Fernandes a copy of the notice.

On December 12 and 13, 2012, Ms. Fernandes received verbal and written comments on the project from Dennis Oberlie, Rick Huber, and Robert Keith of the Wyoming Game and Fish Department (WGFD). The individuals agreed that Six Mile Creek likely supports a wild brook trout population, which is a non-native species, and that there is little indication that Six Mile Creek is an important habitat for sensitive native fish species. Their only concern about the project was the effect the project may have on flows to the Black Fork River, which converges with Six Mile Creek 0.6 mile downstream of the project and

supports habitat for important fish species such as the Bluehead Sucker, Flannelmouth Sucker, and Roundtail Chub. For this reason, the WGFD staff recommended that the project be operated to maintain historical flow levels, especially during periods of low flow.

**Attachments:**

1. SEO permit
2. Images of Project Construction
3. Notes from Site Inspection
4. Images from Site Inspection
5. GPS Delineation
6. Andrew Johnson's Response to NOV
7. SEO Notice to New Permittees
8. Draft Jurisdictional Determination

NOTE: Do not fold this form. Use typewriter  
or print neatly with black ink.

STATE OF WYOMING  
OFFICE OF THE STATE ENGINEER

SCANNED MAY 26 2011

J. Cowley

APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER

THIS SECTION IS NOT TO BE FILLED IN BY APPLICANT

Filing/Priority Date

THE STATE OF WYOMING  
STATE ENGINEER'S OFFICE } SS.

This instrument was received and filed for record on the 28 day of June  
20 10 at 9:32 o'clock A.M.

John R. Barnes for 88 State Engineer

Recorded in Book 121 of Stock Reservoir Permits, on Page 88

Fee Paid \$ 25.00 Map Filed

WATER DIVISION NO. 4 DISTRICT NO. 15 TEMPORARY FILING NO. 35 4/74

PERMIT NO. 19468 STOCK RESERVOIR

NAME OF FACILITY

THE \*Johnson\* STOCK RESERVOIR

1. Name(s), mailing address and phone no. of applicant(s) is/are 686 County Road 260 Fort Bridger  
WY 82933  
Andy and Katie Johnson 307-782-6862

E-mail address:

(If more than one applicant, designate one to act as Agent for the others)

2. Name & address of agent to receive correspondence and notices SAME

E-mail address:

3. The use to which the water is to be applied is in-place stock watering purposes.

4. (a) The area of the high water line of the reservoir is 2.5 acres (If a pipeline to additional points of storage will be used, include form SW4-A.)  
(b) The capacity of the reservoir is 11.3 acre-feet

(c) Body of Reservoir: Length 1275 600 Width 170 Average Depth 43 4.3

5. The source of the proposed appropriation is 3 mile Creek Trib. Black's Fork Crk. Trib.  
Six Mile Creek, Trib. Black's Fork River Trib. Green River

6. The outlet of the reservoir is located in SW 1/4 NE 1/4 of Section 30  
T. 15 N., R. 115 W. Surveyed corner tie, if available: bearing  
feet distant from the corner of Section T. N., R. W.  
Lot Block Subdivision Name  
Latitude (Decimal Degrees) 41° 15' 6.3" N Longitude (Decimal Degrees) 110° 25' 10.8"

7. Are any of the lands covered by the proposed reservoir owned by the State or Federal government? If so, describe lands and designate whether State or Federally owned.

8. Fill out either (a) or (b).

(a) The reservoir is located in the channel of 3 mile creek Six Mile Creek

(b) The reservoir is to be filled through the

Canal, which has a carrying capacity of cubic feet per second (c.f.s.)

9. (a) The dam is to be constructed as follows Earth Fill watered + compacted  
contents = cubic yards.

(b) The water face of the dam is to be protected from wave action in the following manner: Rock Rip Rap  
1' thick

(c) Dam Height 18 feet.

10. The accompanying map is prepared in accordance with the State Engineer's Rules and Regulations for filing applications and is hereby declared a part of this application.

11. The estimated time required for completion of construction is 3 year

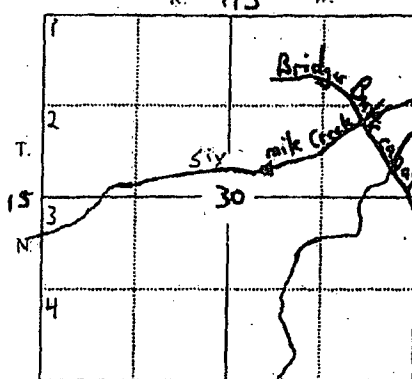
Permit No. 19468 Stk Res.

Page No. 88  
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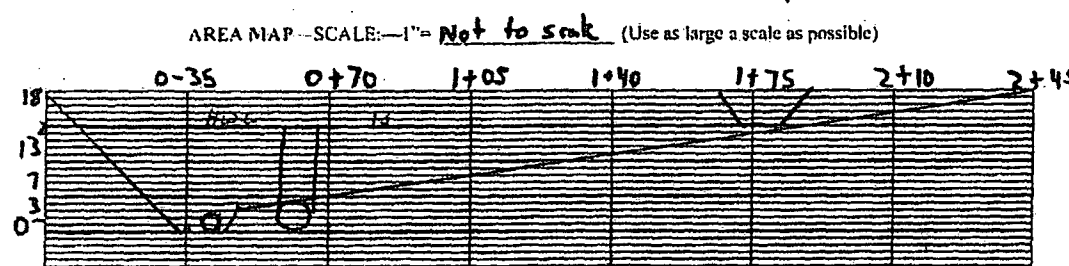
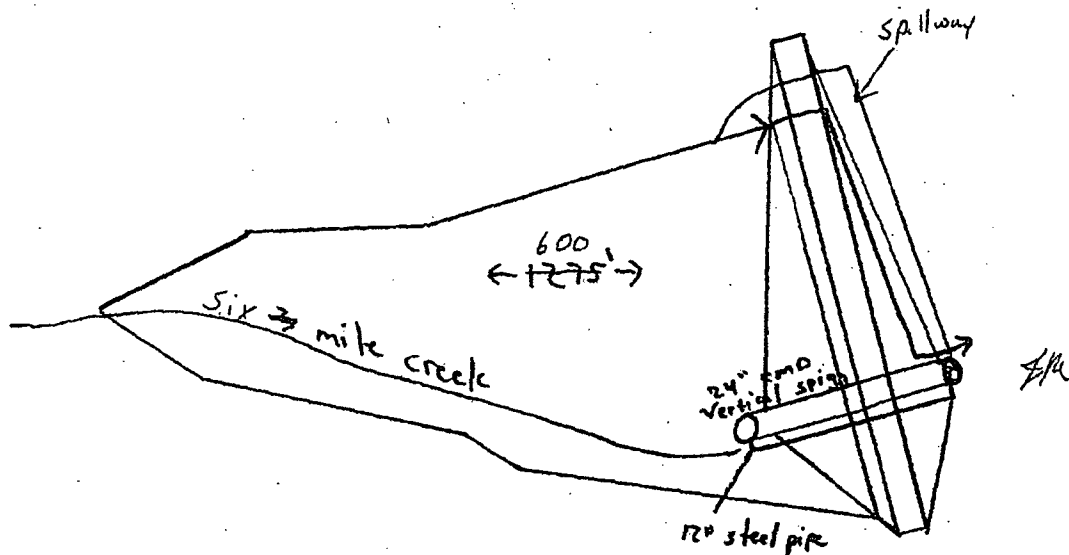
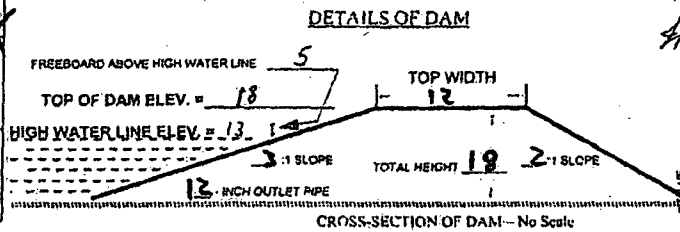
# MAP AND PLANS OF PROPOSED

Johnson

STOCK RESERVOIR



LOCATION MAP—Scale 1"=2,000 ft.  
SEE NOTE BELOW



Capacity = [Area x Depth + 3] = 5.07 12.7 Acre-Feet

NOTE: The location map shown above is not required if the application is accompanied by an aerial photograph or a U.S.G.S. quadrangle map, prepared in accordance with the State Engineer's Rules and Regulations. However, the area map, cross-section of dam, profile of damsite and capacity computation must be completed in all applications.

## DECLARATION

Under penalties of perjury, I declare that I have examined this application and the information contained herein, and to the best of my knowledge and belief it is true, correct and complete, and that the location of the proposed facility is accurately shown either above or on the aerial photograph or U.S.G.S. quadrangle map accompanying this application.

Andy Johnson

Signature of Applicant or Agent

6-11-2010

Date

THE STATE OF WYOMING  
STATE ENGINEER'S OFFICE

} ss.

TEMPORARY FILING NO. 35474

THIS IS TO CERTIFY that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

This permit grants only the right to use the water available in the stream after all prior rights are satisfied.

If the plans show that no outlet works are contemplated, the State Engineer may, upon proper complaint by other interested water appropriators or appropriator, or when in his judgment it is necessary, require the later installation of such necessary outlet works as will permit proper regulation.

This permit is granted for storage of 5.07 acre-feet of water from all sources in any one year, for stock watering purposes only.

The holder of this permit shall inspect the spillway after each runoff event with the potential to flow through the spillway. Any erosion that has occurred shall be repaired in anticipation of the next runoff event.

This permit is conditioned on the holder of this permit securing and/or providing free and unencumbered access to this facility to allow State Engineer personnel to perform their duties as prescribed by Law. These duties include, but are not limited to, construction inspections and water administration.

The permittee is advised that this reservoir will inundate lands irrigated under Permit No. 9325. Pursuant to WS 41-3-107, the permittee has up to five (5) years to change the water rights to irrigate other lands or otherwise prove that the irrigated acreage is not affected by the construction of the reservoir. If the change has not occurred by the end of the five-year period, this fact will be reported to the Board of Control for routine abandonment of the water right attaching to the lands at or below the high water line of the reservoir, consistent with law.

The time for completing the construction of the reservoir shall terminate on December 31, 20 13.

Witness my hand this 25<sup>TH</sup> day of MAY, A.D. 20 11.

  
PATRICK T. TYRRELL, State Engineer

Permit No. 19468 Sik. Res.

Page No. 88  
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PERMIT NO. 19468 STK. RES.

PERMIT STATUS

Priority Date June 28, 2010

Approval Date May 25, 2011

NOTICE

This permit, does not constitute a complete water right. It is your authority to begin construction work.

Notice of completion of the work described in the permit, must be filed in the State Engineer's Office before the expiration of the time allowed in the permit.

If extensions of time beyond the time limits set forth in the permit are required, requests for same must be in writing, stating why the additional time is required, and must be received in the State Engineer's Office before the expiration of the time allowed in the permit.

Once the Notice of Completion has been filed, Proof of Appropriation will be prepared and sent to your Water Division Superintendent. The Superintendent will arrange with you for an inspection of the facility. Should you desire adjudication, the Proof will be considered by the Board of Control, and, if found to be satisfactory, the Board will issue to you a Certificate of Construction which will constitute a completed water right.

The granting of a permit does not constitute the granting of right-of-way. If any right-of-way is necessary in connection with the application it should be understood that this responsibility is the applicant's.

Pictures of dam construction  
Received by WRO on 13 September 2012



Pictures of dam construction  
Received by WRO on 13 September 2012



Pictures taken during 11 October 2012 enforcement inspection  
686 County Road 260, Fort Bridger, Wyoming, 82933-8814  
NWO-2012-02486



## SITE VISIT RECORD

Date of Visit: Thursday, 11 Oct 2012

Address: 686 County Road 260, Fort Bridger, Wyoming, 82933-8814

Attendees: Jesse Fernandes (WRO), Kevin Little (WRO), Andrew Johnson (Landowner), Katie Johnson (Landowner and wife)

### Summary (Recorded Tuesday, 16 Oct 12)

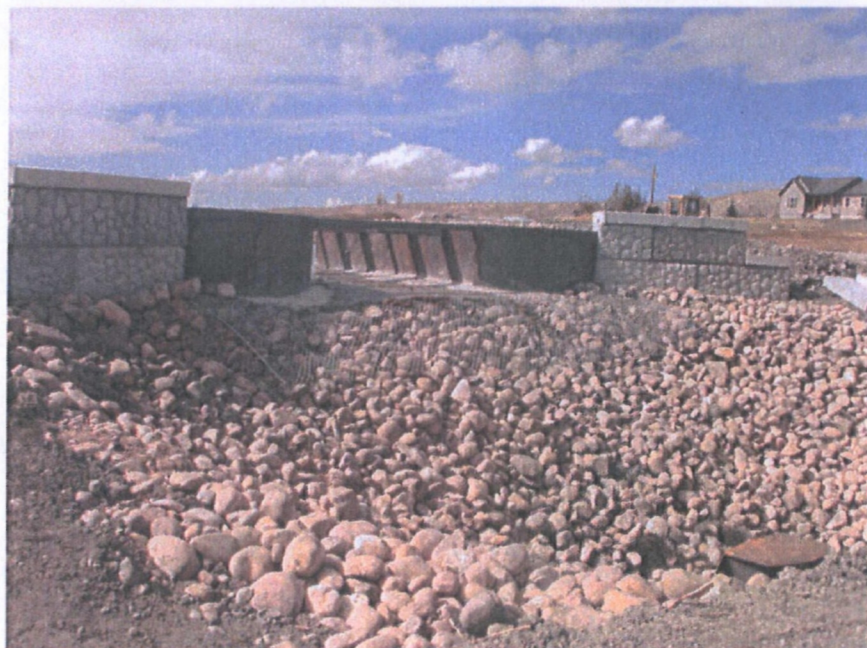
Kevin and I arranged to meet Mr. Johnson on his property to discuss the dam. When we arrived, dam construction looked nearly complete. Mr. Johnson said that when he moved to the property approximately 10 years ago, he had the idea for the dam. He said the purpose of the dam is for fishing. Six Mile Creek has brown trout and brook trout. Mr. Johnson said he worked with John Yarbrough at the State Engineers Office to design the project, and the state subsequently revised the design. The dam is 18 feet high. Mr. Johnson said Mr. Yarbrough issued the SEO permit for the project. Mr. Johnson said he was halfway through dam construction (construction began July 2012) before his neighbor, Mr. Short, said he needed to get a USACE permit.

Mr. Johnson said the dam was 75% complete when he spoke with Matt Bilodeau. After he spoke with Mr. Bilodeau, Mr. Johnson spoke with Mr. Yarbrough about the conversation with USACE. Mr. Yarbrough said he would take care of the issue. Subsequently, Mr. Johnson tried at least three times to follow-up with Mr. Yarbrough about the issue with USACE but has been unable to reach him.

Mr. Johnson said that dam construction had garnered a lot of attention in the community. He said that during the early stages of construction, many people in the community did not support construction of the dam. He said that as construction progressed, however, some of those same people said the dam was looking good and that the project wasn't so bad.

During the site visit, Kevin Little took GPS points around the project area. I took pictures of the project area. The project did not appear to have impacted any wetlands.

Pictures taken during 11 October 2012 enforcement inspection  
686 County Road 260, Fort Bridger, Wyoming, 82933-8814  
NWO-2012-02486



Pictures taken during 11 October 2012 enforcement inspection  
686 County Road 260, Fort Bridger, Wyoming, 82933-8814  
NWO-2012-02486

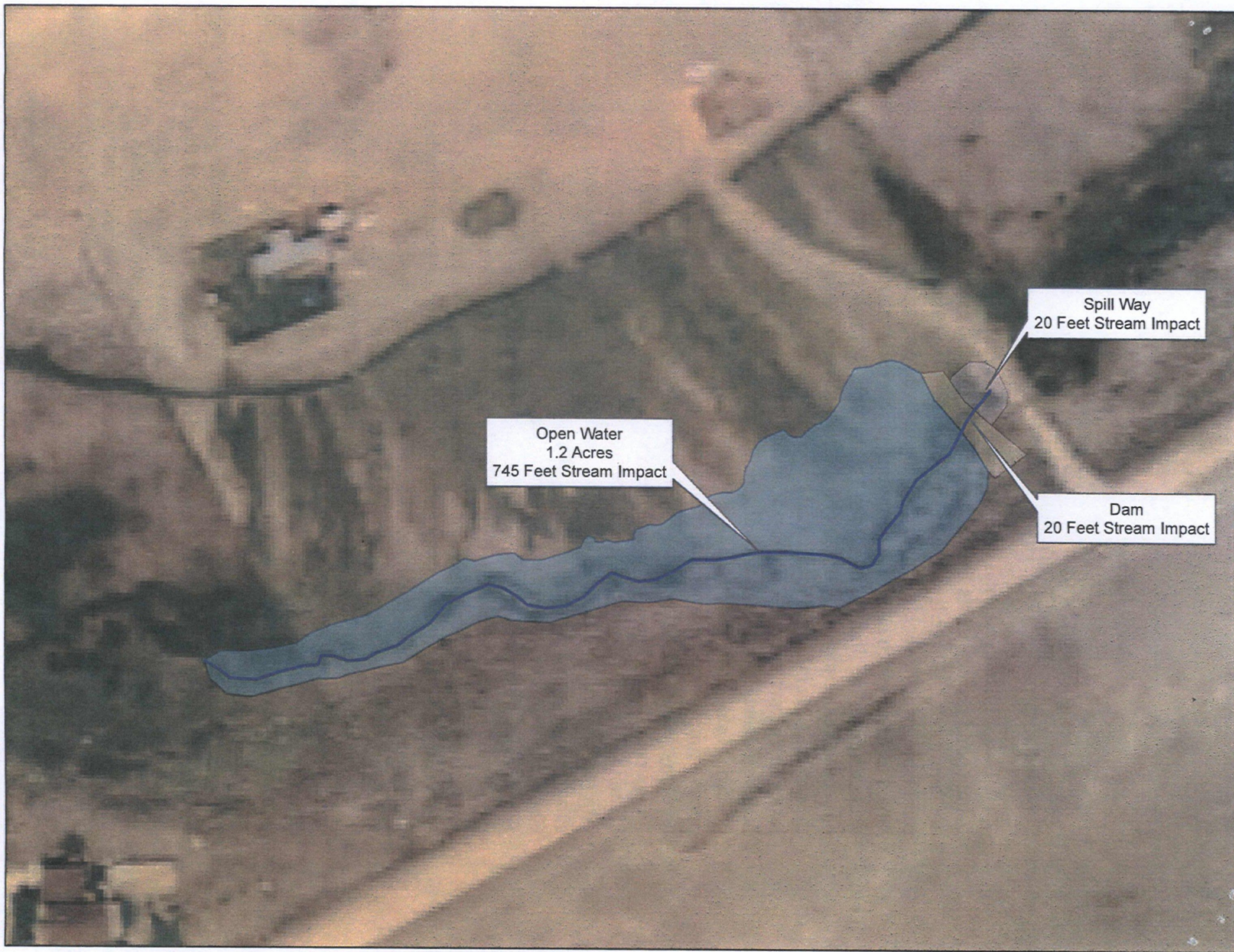


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686 County Road 260, Fort Bridger, Wyoming, 82933-8814  
NWO-2012-02486



Pictures taken during 11 October 2012 enforcement inspection  
686 County Road 260, Fort Bridger, Wyoming, 82933-8814  
NWO-2012-02486





Open Water  
1.2 Acres  
745 Feet Stream Impact

Spill Way  
20 Feet Stream Impact

Dam  
20 Feet Stream Impact

MB  
JF-  
KL-

Andy Johnson  
686 County Road 260  
Fort Bridger WY, 82933  
Phone 1-307-782-6862

I would like to respond to the recent letter I received regarding our fishing pond project. This has been a very lengthy and extensive project for my family and I. I have lived on this property for about eight years and started inquiring about building a pond about five years ago. Nobody I talked to knew much about the permitting process so I contacted the state water engineer in Uinta County, John Yarborough. He was excited about the project and came out to my property numerous times to survey and discuss the project. He informed me that all I needed was a state issued "stock reservoir" permit. I asked John extensively if that was all we needed and he insisted that he had dealt with dozens of ponds and yes that is all I needed. I also had contacted as many local people as I could that had ponds of similar nature to discuss permitting and structure ideas. Through all of my research I did not hear one time about the Army Core of Engineers. To my knowledge the core was over huge projects like the Flaming Gorge Dam and the Mississippi River. I also contacted three different construction companies which all of them came out to look and survey the property. I contacted the state Game and Fish biologist in Cheyenne to discuss water quality, depth, fish and game bird habitat and fish stocking. He was very positive about the project and told me that it would very much improve the fish and wildlife habitat and clean and oxygenate the water coming out of the spillway. I finally sent in for the permit and received it back about six months later. My permit stated I had three years to construct the dyke. I spent the first year gathering materials and doing extensive research on ponds around the area.

My purpose for building this pond was to absolutely improve fish and game bird habitat as well as improve water quality in six mile creek downstream. Previously there was very few fish and wildlife that lived in and around six mile creek. I wanted to create a place where fish could thrive and ducks and geese could live where they previously didn't. After living in the Bridger Valley I came to find out that most of all the land is privately owned. I wanted a place where kids could come fish and enjoy the outdoors. I have also contacted the special needs children in the area to get them involved with fishing. Since completion of the pond we have had an abundance of birds and wildlife including ducks, geese, blue hereon, osprey,

US Army Corps of Engineers  
WY Regulatory Office  
Received

11/15/12

musk rat, deer, moose, fish and more.

I finally got all the equipment and materials together and got started. I started by building a sediment trap out of wood and cloth material to catch any dirt from going down stream. Then I constructed a seventy five foot long, twenty four inch schedule eighty pipe. The pipe has a stainless steel gate valve on one end to serve as a flow through as the dyke was constructed. We then started the dirt work, we dug all of the fill material used for the dyke directly from the banks of six miles creek, all on my property. I used a nine eighty cat loader to fill and compact every six inches of the dyke. We made sure to have a three to one slope as the permit states and a two to one on the non-water side. We then lined the entire face of the dyke with a thick felt pond lining material to prevent any erosion of the structure. Then we hauled in big cobble rock for rip rap which was also taken from the same drainage. We made sure to stay well under the dimensions of the permit which was eight-teen feet high. The dam is actually only ten feet high to water line. I then started working on the spillway which was designed to fill the pond and allow water to flow through and drop over a natural bed of cobble rock, oxygenating and cleaning the water in the process. I was very selective on the materials I used, making sure that they were natural and in no way harming six mile creek.

I was contacted by the Army Core about three months into construction and spoke with Matthew Bilodeau. He informed me that he had been contacted by a "concerned neighbor" and I actual needed a permit through them. I told him that I had no prior knowledge of the Army Core or the permit through them. I told him that I would do anything they needed and would work with them. The day after I contacted John Yarborough and discussed the conversation we had the previous day. He informed me that the Army Core had not ever been involved in projects this small and that he would take care of it. I trusted John and didn't hear anything for a while, then was contacted by the core again. They wanted to come visit and to check out the project. I welcomed them and told them of the situation with the state water engineer. At that time they informed me that they had not spoken to Mr. Yarborough at all. They inspected the project and gave me a lot of compliments about the pond. They informed me that there was possible routes to take for permitting after construction.

I would very much like to resolve any issues with this pond and the Army Core. I spent an unbelievable amount of time, work and money on this and researched every avenue possible for permitting to my knowledge.

I apologize and would have certainly contacted the core if I would have known. Since completion of our pond we have had a huge positive response from the whole community. This is a great addition not only to fish and wildlife but for kids from all over. I plan to make this a catch and release only pond and absolutely no hunting. If you have any other questions or concerns please contact me directly. Thank you.



IMPORTANT NOTICE - PLEASE READ CAREFULLY

The approval by the State Engineer of a permit grants an appropriation of water only, and does not grant any authority or permission to use the property of someone else.

If you do not own the land upon which your facility will be constructed, you should, before starting construction, take immediate steps to secure a permanent right-of-way.

If any part of the facility is located on State Land, and you are the lessee of record, communicate with the State Land Commission for necessary applications for construction of improvements. If you are not the lessee of record, Land Board approval is needed for right-of-way across or upon the leased area.

If the facility is to be located on Federal Lands, it will be necessary that you contact the Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, for information as to what is needed. If lands controlled by the Forest Service are involved with this facility, the local Forest Service Office should be contacted for the proper procedure required to obtain a right-of-way.

If privately owned lands are involved with this facility, right-of-way should be secured by written agreement from the land owner, securing sufficient land to properly allow any work that may be necessary. This written agreement should be made a matter of record in the Office of the County Clerk of the County in which the land is situated and the State Engineer's Office.

Such procedure will save you a great deal of unnecessary expense in the future, as any person subsequently filing on Federal Lands or purchasing State Lands, may claim damages, unless such right-of-way is made a matter of record and patent given subject to a right-of-way for existing facilities.

Construction of this facility may require the discharge of dredged or fill material into Wyoming water bodies and wetlands, including intermittent streams, as authorized by Section 404 of the Clean Water Act (33 U.S.C. 1344). The permittee is advised to contact the Corps of Engineers' office to determine if their proposed work requires authorization from that agency. Corps office is located as follows:

Cheyenne Regulatory Office  
2232 Dell Range, Suite 210  
Cheyenne, WY 82009  
(307) 772-2300

If the water right is for a source to be developed for human consumption serving 15 or more service connections, or 25 or more persons, for 60 days or more of the year, then regulations developed under the Federal Safe Drinking Water Act apply. Specific requirements of the Act are available from the Water Supply Section, Region VIII, U. S. Environmental Protection Agency, One Denver Place, 999 18th Street., Suite 500, Denver, CO 80202-2405.

If water is to be supplied for human consumption to 20 or more service connections, the provisions of Chapter III of the Wyoming Water Quality Rules and Regulations apply. You are advised that plans and specifications covering the proposed construction, installation, or modification of any system designed for this purpose are required to be submitted to and a permit to construct obtained prior to the start of construction from, the Water Quality Division, Wyoming Department of Environmental Quality, Herschler Building-4th Floor West, Cheyenne, WY 82002.

If the water right facilities are to be constructed in areas subject to local zoning regulations, the proper zoning authorities should be contacted to avoid violation of established zoning laws.

Very truly yours,

PATRICK T. TYRRELL  
State Engineer

PTT/sjt

Rev. 1/24/01

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CENWO-OD-RWY, Andrew Johnson Unauthorized Dam, NWO-2012-02486

**C. PROJECT LOCATION AND BACKGROUND INFORMATION: Six Mile Creek**

State: Wyoming County/parish/borough: Uinta County City: NA  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.251915N; Long. -110.420105W  
Universal Transverse Mercator:

PLSS Location: SW 1/4 NE 1/4 of Section 30, Township 15 North, Range 115 West, 6<sup>th</sup> PM

Name of nearest waterbody: Six Mile Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Flaming Gorge Reservoir

Name of watershed or Hydrologic Unit Code (HUC): Blacks Fork, Utah, Wyoming, HUC 14040107

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☒ Office (Desk) Determination. Date: 12 December 2012

☐ Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☒ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: 785 linear feet: 4 width (ft) and/or acres.

Wetlands: 0.00 acres.

**c. Limits (boundaries) of jurisdiction based on: Not established at this time.**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain:

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size:

Pick List

Drainage area:

Pick List

Average annual rainfall: inches (includes all precipitation, recorded from the Climatology of the United States No. 81 Monthly Station Normals of Temperature, Precipitation, and Heating and Cooling Degree Days 1971 – 2000, published by the US Department of Commerce National Oceanic and Atmospheric Administration)

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW<sup>5</sup>:  
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural  
☐ Artificial (man-made). Explain:  
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet  
Average depth: feet  
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

Subsurface flow: **Pick List**. Explain findings:

☐ Dye (or other) test performed:

Tributary has (check all that apply):

<input type="checkbox"/> Bed and banks	
<input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):	
<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:	

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list):	

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup> A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup> Ibid.

Identify specific pollutants, if known:

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size:        acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain:

☐ Ecological connection. Explain:

☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately (        ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
------------------------------	------------------------	------------------------------	------------------------

Summarize overall biological, chemical and physical functions being performed:

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
☐ TNWs: linear feet width (ft), Or, acres.  
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Flow data for Six Mile Creek is not available. Aerial imagery from August 1994, November 2002, July 2006, and July 2009 show the presence of water in the stream channel. WRO staff visually confirmed the presence of water during the October 2012 site visit. Six Mile Creek appears as a solid blue line on USGS topographic map, indicating that water flows year-round. Personal communications with a landowner who owns property near the review area also indicate that the creek is perennial.

- ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

☒ Tributary waters: 785 linear feet 4 width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters:

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters:

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

☐ Demonstrate that impoundment was created from "waters of the U.S.," or

☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.  
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
☐ which are or could be used for industrial purposes by industries in interstate commerce.  
☐ Interstate isolated waters. Explain:

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

☐ Other factors. Explain:

**Identify water body and summarize rationale supporting determination:**

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters:

☐ Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

☐ Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource:

☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource:

☐ Wetlands: acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☐ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps:

☐ Corps navigable waters' study:

☐ U.S. Geological Survey Hydrologic Atlas:

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 Robertson Quadrangle Wyoming-Uinta County and 1:24,000 Fort Bridger Quadrangle Wyoming - Uinta County.

☐ USDA Natural Resources Conservation Service Soil Survey. Citation:

☐ National wetlands inventory map(s). Cite name:

☐ State/Local wetland inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): GoogleEarth/ORM.

or ☒ Other (Name & Date):

☐ Previous determination(s). File no. and date of response letter:

☐ Applicable/supporting case law:

☐ Applicable/supporting scientific literature:

☒ Other information (please specify): GPS wetland delineation (from WRO 11 October 2012 site visit).

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

# Six Mile Creek, Approved Jurisdictional Determination

SW ¼ NE ¼, Section 30, Township 15 North, Range 115 West, Uinta County, Wyoming



NWO-2012-02486

Review area

## LEAD ENFORCEMENT AGENCY IDENTIFICATION

The purpose of this form is to document the lead enforcement agency designation in accordance with the "Memorandum of Agreement (MOA) Between the Department of the Army and the Environmental Protection Agency (EPA) Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act" dated January 19, 1989.

### I. INFORMATION

1. Corps File Number: NWO-2012-02486
2. Location (Lat/Long, Section, Township, Range): The property is located in the SW ¼ NE ¼ of Section 30, Township 15 North, Range 115 West, Uinta County, Wyoming. (Latitude 41.251915 N, Longitude -110.420105 W)
3. Landowner: Andrew Johnson
4. Contractors: Andrew Johnson performed the work himself
5. Violator: Andrew Johnson  
686 County Road 260  
Fort Bridger, Wyoming 82933-8814
6. Date Violation Occurred: Dam construction began in July, 2012
7. Date of Investigation & Corps Investigators: 11 October 2012, Jesse N. Fernandes and Kevin C. Little
8. Description of Unauthorized Activities: Mr. Johnson used heavy equipment to construct a dam and fish pond on his property, resulting in discharges of fill material into Six Mile Creek, a perennial waterway. Construction activities resulted in at least 11.85 cubic yards of material being placed below the creek's ordinary high water mark and impacted a reach of Six Mile Creek more than 785 feet in length.
9. Classification from Part III. D(1):
  - ☐ a. Repeat Violator(s)
  - ☐ b. Flagrant Violator
  - ☒ c. Particular Case EPA May Request
  - ☐ d. Corps Recommends Administrative Penalty
10. Completed Inspection Report and Preliminary Jurisdictional Determination: Attached
11. ORM 2 Database Query Results for Landowners, Contractors, and/or Violators: Database search resulted in no other entries for Andrew Johnson.

12. Corps Recommendations for Resolution: The USACE recommends that USEPA act as the lead agency due to the nature of the violation and order complete restoration of the site.

## II. EPA DETERMINATION

- ☒ EPA will act as lead enforcement agency.
- ☐ EPA declines the lead enforcement agency role and refers the matter back to the Corps pursuant to Part III. D(2) of the MOA. EPA's recommendations are:

If applicable:

EPA requested additional time (date, time, Corps contact): \_\_\_\_\_

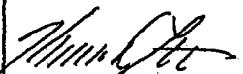

EPA requested additional information (date, time, Corps contact, type of info): \_\_\_\_\_

## III. JOINT ENFORCEMENT STRATEGY (if applicable)

Corps Lead:

EPA Lead:

## IV. CERTIFICATION (must be completed)

	Corps Representative	EPA Representative
Name/Title	Kevin C. Little/Project Manager Wyoming Regulatory Office	Dale Clark Wyoming Scientist, RSN
Signature/Date	 8 FEB 2013	 4/25/13